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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DAVID B. TURNER JR.,
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12 Plaintiff,
13 v.
14 AT&T,
15 Defendant.
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Case No. 15-cv-02263-BAS(JLB)
**ORDER DISMISSING ACTION
WITHOUT PREJUDICE**

17 Plaintiff David Turner is proceeding *pro se* and *in forma pauperis* against
18 Defendant AT&T. Upon review of Plaintiff's Complaint, the Court concludes it lacks
19 subject matter jurisdiction over this action. Therefore, for the following reasons, the
20 Court **DISMISSES WITHOUT PREJUDICE** this action.

21 **I. LEGAL STANDARD**

22 "Federal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life*
23 *Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). "They possess only that power authorized
24 by Constitution or a statute, which is not to be expanded by judicial decree." *Id.*
25 (citations omitted). "It is to be presumed that a cause lies outside this limited
26 jurisdiction and the burden of establishing the contrary rests upon the party asserting
27 jurisdiction." *Id.* (citations omitted); *see also Abrego Abrego v. Dow Chem. Co.*, 443
28 F.3d 676, 684 (9th Cir. 2006).

Although there has not been a request for dismissal, it is well-established that “a district court’s duty to establish subject matter jurisdiction is not contingent upon the parties’ arguments.” *See United Inv’rs Life Ins. Co. v. Waddell & Reed Inc.*, 360 F.3d 960, 966 (9th Cir. 2004). Courts may consider the issue *sua sponte*. *Demery v. Kupperman*, 735 F.2d 1139, 1149 n.8 (9th Cir. 1984). Indeed, the Supreme Court has emphasized that “district courts have an ‘independent obligation to address subject-matter jurisdiction *sua sponte*.’” *Grupo Dataflux v. Atlas Glob. Grp., L.P.*, 541 U.S. 567, 593 (2004) (quoting *United States v. S. Cal. Edison Co.*, 300 F. Supp. 2d 964, 972 (E.D. Cal. 2004)).

II. ANALYSIS

A. Diversity Jurisdiction

The first possibility for subject matter jurisdiction is based upon diversity of citizenship. Under 28 U.S.C. § 1332, the court has original jurisdiction over “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between -- (1) citizens of different States” Thus, “[s]ubject matter jurisdiction based upon diversity of citizenship requires that no defendant have the same citizenship as any plaintiff.” *Tosco Corp. v. Comtys. for a Better Env’t*, 236 F.3d 495, 499 (9th Cir. 2001) (per curiam), *abrogated on other grounds by Hertz Corp v. Friend*, 559 U.S. 77 (2010).

Whether the amount in controversy exceeds the \$75,000 minimum for diversity jurisdiction is determined from the allegations or prayer of the complaint. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938). A general allegation that the damages exceed \$75,000 is usually sufficient to satisfy this requirement. *E.g., K. Durant Enters., LLC v. Swanson Travel Prof’ls, Inc.*, No. 13-01534 MMM (AJWx), 2014 WL 545843, at *2 (S.D. Cal. Feb. 10, 2014) (citing *Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010)). However, an action is subject to dismissal if “it is clear to a legal certainty” that the claim could not sustain a judgment over the minimum amount in controversy.

1 *See Christensen v. Nw. Airlines, Inc.*, 633 F.2d 529, 531 (9th Cir. 1980) (“It is clear
 2 to a legal certainty that appellant’s unliquidated tort claim could not sustain a
 3 judgment of over [the minimum amount in controversy] A federal court should
 4 not and cannot adjudicate such minor claims.”); *see also Diefenthal v. C.A.B.*, 681
 5 F.2d 1039, 1052 (5th Cir. 1982). In other words, although a plaintiff may subjectively
 6 believe in good faith that the claim exceeds the minimum amount in controversy, the
 7 claim should nevertheless be dismissed if it lacks “objective good faith”—*i.e.*, “if
 8 one familiar with the applicable law could not reasonably have concluded that the
 9 claim was worth the jurisdictional amount.” *Esquilin-Mendoza v. Don King Prods.,*
 10 *Inc.*, 638 F.3d 1, 4 (1st Cir. 2011).

11 Here, the Court lacks diversity jurisdiction over Plaintiff’s action. Plaintiff’s
 12 Complaint is titled “Breach of Contract [&] Unfair Business Practices.” (Compl.,
 13 ECF No. 1.) Although the pleading is unclear, the Court construes Plaintiff’s
 14 Complaint as seeking damages against AT&T for breach of a monthly cell phone
 15 contract. (*See id.*) Plaintiff states he has a “\$45 plan with unlimited phone, text, and
 16 high speed internet that has been slod [sic] for conflicts of interests.” (*Id.*) He alleges
 17 he has “missed important phone and internet contacts because of [problems caused
 18 by AT&T].” (*See id.*) Plaintiff “demands monetary compensation for the amount of
 19 \$77,000,000.00.” (*Id.*)

20 In assessing diversity jurisdiction, the Court assumes Plaintiff states a claim
 21 for breach of contract against AT&T under California state law. Plaintiff does not
 22 allege the parties’ citizenship. (*See* Compl.) Yet, even if Plaintiff were to allege
 23 complete diversity of citizenship, the Court finds his claim does not satisfy the
 24 amount in controversy requirement. “[I]t is clear to a legal certainty” that Plaintiff’s
 25 breach of contract claim arising out of a \$45 monthly cell phone contract with AT&T
 26 could not sustain a judgment over the required \$75,000 amount in controversy. *See*
 27 *Christensen*, 633 F.2d at 531. Therefore, this Court “should not and cannot adjudicate
 28 such [a] minor claim[].” *See id.*; *see also St. Paul Mercury Indem. Co.*, 303 U.S. at

289; *Esquilin-Mendoza*, 638 F.3d at 4. Accordingly, assuming Plaintiff states a claim under state law, the Court lacks diversity jurisdiction over Plaintiff's Complaint because the amount in controversy requirement is not satisfied. *See* 28 U.S.C. § 1332.

"Absent diversity of citizenship, federal-question jurisdiction is required." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The Court therefore turns to whether Plaintiff has established federal question jurisdiction.

B. Federal Question Jurisdiction

Alternatively, federal district courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc.*, 482 U.S. at 392.

Here, Plaintiff's Complaint does not invoke federal question jurisdiction. Plaintiff does not identify or seek relief under a specified federal statute. However, as Plaintiff is proceeding *pro se*, the Court will construe Plaintiff's claims as arising under 42 U.S.C. § 1983. "Section 1983 creates a private right of action against individuals who, acting under color of state law, violate federal constitutional or statutory rights." *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 "is not itself a source of substantive rights, but merely provides a method for vindicating federal rights elsewhere conferred." *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (internal quotation marks omitted). "To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws of the United States, and (2) that the deprivation was committed by a person acting under color of state law." *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012).

Plaintiff alleges his "4th, 6th, 8th, 14th and 1st amendment . . . rights" were violated by Defendant. (*See* Compl.) However, Plaintiff does not allege that


Defendant or its employees were acting under color of state law. Accordingly, the Court finds Plaintiff has failed to make a non-frivolous assertion of a federal claim sufficient to establish federal question jurisdiction.¹ *See Bollard v. Cal. Province of the Soc’y of Jesus*, 196 F.3d 940, 951 (9th Cir. 1999) (“Any non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction.”). Thus, the Court lacks subject matter jurisdiction because there is no federal question presented in this action. *See* 28 U.S.C. § 1331.

III. CONCLUSION

In sum, Plaintiff fails to establish diversity jurisdiction as required by 28 U.S.C. § 1332. He also does not assert a claim that presents a federal question as required by 28 U.S.C. § 1331. Consequently, the Court lacks subject matter jurisdiction over this action, and the Court **DISMISSES WITHOUT PREJUDICE** this action in its entirety. If Plaintiff can correct the deficiencies in his Complaint, he may file an amended complaint no later than **December 22, 2016**. *See* 28 U.S.C. § 1653.

IT IS SO ORDERED.

DATED: October 25, 2016


Hon. Cynthia Bashant
United States District Judge

¹ Plaintiff is proceeding *in forma pauperis*. Thus, in addition to assessing subject matter jurisdiction, the Court has an obligation to dismiss this case at any time if the Court determines that the action “fails to state a claim on which relief may be granted.” *See* 28 U.S.C. § 1915(e)(2)(B)(ii); *see also Calhoun v. Stahl*, 254 F.3d 845 (9th Cir. 2001) (holding that the provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners). Even if Plaintiff’s Complaint establishes federal question jurisdiction, the Court finds it appropriate to dismiss any federal claim—whether arising under 42 U.S.C. § 1983 or otherwise—for failure to state a claim.